Filed 2/14/19 In re K.H. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re K.H., a Person Coming Under the Juvenile Court Law.	B290786 (Los Angeles County Super. Ct. No. DK06747)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. T.H., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Natalie P. Stone, Judge. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and

Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

After more than three years of dependency jurisdiction over minor K.H., the juvenile court terminated family reunification services provided to her mother T.H. (Mother) and later terminated Mother's parental rights over K.H. as well. Mother challenges both decisions. Specifically, we consider (1) whether Mother can attack the order terminating services even though she did not seek writ review of that order, and (2) whether the juvenile court abused its discretion in denying a continuance of the parental rights termination hearing so Mother could testify about her visitation with K.H. and the nature of their relationship—in the hope of establishing the parent-child relationship exception to termination of parental rights.

I. BACKGROUND

In August 2014, the Los Angeles County Department of Children and Family Services (the Department) filed a dependency petition pursuant to Welfare & Institutions Code section 300, subdivisions (a) and (b)(1),[1] alleging, among other things, Mother's history of substance abuse and then-recent abuse of methamphetamine, heroin, and marijuana placed then-four-year-old K.H. at risk of serious physical harm.[2] The Department removed K.H. from Mother's care and placed her

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[1] Undesignated statutory references that follow are to the Welfare and Institutions Code.

[2] In November 2014, the Department filed a first amended section 300 petition on behalf of K.H. adding J.F. (Father) as K.H.'s alleged father. Father also appealed from the juvenile court's order terminating his and Mother's parental rights. We later dismissed Father's appeal as abandoned.

with foster parents who lived in Riverside County (the Foster Parents). At the jurisdiction hearing, Mother pled no contest to the petition and the juvenile court assumed jurisdiction over K.H. under section 300, subdivision (b)(1) based on Mother's substance abuse. The juvenile court ordered family reunification services for Mother and required her to participate in individual counseling, random drug testing, and a drug treatment program.

A. The First Termination of Family Reunification Services

In advance of the six-month review hearing, the Department reported K.H. was "happy and well adjusted" in the Foster Parents' home. With regard to Mother, the Department reported she was currently incarcerated on a burglary charge and was not in compliance with court-ordered services. Despite Mother's noncompliance, the Department recommended she receive an additional six months of reunification services. At the six-month review hearing, the juvenile court found Mother's progress toward alleviating the causes that gave rise to K.H.'s removal from her care was "minimal," but the court continued family reunification services.

In the interval between the six-month and one-year review hearings, Mother was homeless, had no means to support herself or K.H., and her visits with K.H. were "not consistent and infrequent." Moreover, Mother was "not in compliance with court ordered services." Specifically, she had not enrolled in parenting, counseling, or substance abuse treatment.

At the one-year review hearing, the juvenile court terminated family reunification services for Mother, finding she had "not consistently and regularly" contacted K.H. nor had she

"made significant progress in resolving the problems" that led to K.H.'s removal. Mother did not attend the hearing (although she was represented by counsel), so the court ordered Mother to be served with a "Notice of Intent to File Writ Petition. . . via First Class Mail." That same day, the court clerk mailed to both Mother and her lawyer a copy of the minute order for the one-year review hearing plus a "Notice of Intent to File Writ Petition and Request for Records" form and an "Advisement of Rights (366.26 W.I.C.)" form. Nothing in the record suggests Mother failed to receive these forms advising that the sole means of challenging the services termination order was by way of extraordinary writ.

B. The Restoration of Family Reunification Services

Before the juvenile court held a hearing to consider terminating Mother's parental rights, Mother filed a section 388 petition seeking custody of K.H., or failing that, an order reinstituting reunification services. Mother emphasized she had completed her case plan, drug tested regularly with negative results, completed an inpatient drug-rehabilitation program and parenting modules, participated in therapy, and visited with K.H. regularly. Although the Department believed it was "too soon" to send K.H. home with Mother, it agreed reunification services should be restored.

The juvenile court granted Mother's request for reinstatement of family reunification services. The court directed Mother to participate in random drug testing, individual counseling, and conjoint counseling with K.H. In addition, the court warned Mother of the consequences of failing to take advantage of its order restoring reunification services: "So I want

to advise Mother, since we're reinstating reunification services, that is for a period of six months. If at the end of that six months I'm not able to order that [K.H.] return home to you, then reunification services are going to have to be terminated, and we'll set another plan for whether it's adoption or guardianship or some other permanent option for her. [¶] So it's very important that you comply fully with your case plan in the next six months and take advantage of your visitation time with [K.H.]"

C. The Second Termination of Family Reunification Services

In advance of the review hearing set six months after the restoration of reunification services, the Department submitted a progress report to the juvenile court. According to the report, Mother continued to participate in individual counseling but conjoint counseling had yet to begin, due in part to Mother's inability to attend the sessions in a timely manner (she had been "late to every single pre[-]scheduled session").[3] Mother had tested negative for drugs on 10 occasions, but she had failed to show up for at least eight scheduled drug tests. Among these missed tests were five consecutive "no shows" between July 3 and July 31, 2017, meaning that for an entire month Mother went untested.

In light of her "ten-year history of substance abuse," the Department found Mother's inconsistent drug testing to be a "concern." As a result, the Department recommended that family reunification services be terminated. As for the Foster Parents,

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[3] One conjoint counseling session was cancelled due to the foster mother's inability to transport K.H. to the session.

the Department advised they had a tight bond with K.H. and there were "no barriers or concerns" to their adoption of K.H. if she did not reunify with Mother.

By the date scheduled for the post-reinstitution of services review hearing, Mother and K.H. had completed three conjoint counseling sessions and the quality of the sessions was "good." The juvenile court, at Mother's request, continued the matter to hold a contested hearing at which evidence could be taken. In the interim, the court ordered Mother to "continue to provide consistent clean drug tests" and to continue to "participate in conjoint counseling."

The Department provided the juvenile court with an updated progress report before the continued hearing date. The Department informed the court that although conjoint counseling was to occur once every other week, Mother had missed four sessions—two of which she cancelled (one due to transportation difficulties, the other due to Mother's younger daughter being ill the night before). With regard to drug testing, Mother had tested negative on four occasions since August 2017, but during that same period she was a "no show" on eight other occasions, missing four drug tests in a row from late August to late September. The Department reiterated its prior recommendation that the juvenile court terminate Mother's reunification services.

Mother did not personally appear at the continued review hearing but she was represented by counsel.[4] After considering the Department's reports and the parties' arguments, the juvenile court found the Department had offered or provided

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[4] The appellate record does not include a transcript of this hearing.

reasonable services to enable K.H.'s safe return to Mother's care,[5] but Mother's participation in the case plan had been nevertheless "minimal." The court terminated Mother's reunification services.

According to the minute order prepared to memorialize the proceedings at this hearing, the court clerk mailed a copy of the minute order and a "Notice of Intent to File Writ, Petition for Extraordinary Writ form(s)" to Mother at her counsel's address, owing to the fact that Mother made no personal appearance at the hearing. Although the clerk mailed the notice to Mother's attorney, the Department's last minute information report did list an address for Mother herself.

D. The Parental Rights Termination Hearing

The Department's selection and implementation report noted the Foster Parents had been married for 25 years, had raised their own biological children, were long-time foster parents, had adopted children in the past, and remained committed to adopting K.H. The Department determined K.H. was "loved and cared for" inside the Foster Parents' home and advised she "has continuously stated that she loves [the Foster Parents] and that if she cannot live with [Mother] then she wants to live with [the Foster Parents]." The Department also reported Mother's in-person visits with K.H. had been infrequent over the last several months; in fact, between February 17, 2018, and

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[5] As detailed in the Department's reports, those services included bus passes, referrals to shelters, drug treatment programs, parenting classes, counseling, and referrals to the Los Angeles County Department of Public Social Services to obtain cash assistance.

April 18, 2018, Mother did not visit with K.H. at all (although there had been occasional video chats and phone calls).[6]

The section 366.26 selection and implementation hearing was originally scheduled for a date in March 2018. Attorneys for the parties appeared on that date, but the court continued the hearing to June to ensure Mother received proper notice of the hearing. At the March court appearance, Mother's attorney did not ask that the continued hearing date be set to permit Mother to present evidence and contest the Department's recommendation for adoption.

Mother (represented by counsel) attended the rescheduled selection and implementation hearing. Although no advance request for a contested hearing had been made, her attorney made an oral request when the matter was called. Counsel explained she had just conferred with her client and told the court: "[Mother] has informed me that she visits with [K.H.] a lot. Based on that and the relationship that she has told me about, I would ask that we set this for contest. So I would ask for a continuance on that."

The court denied the request to continue the hearing to permit Mother to testify, finding that it was "untimely" because the case had been pending for almost four years, reunification

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[6] During this period the Department did not document any regression in the relationship between Mother and K.H. despite the lack of direct personal interaction. Previously, the Department had reported Mother's counselor described Mother and K.H. as "two peas in a pod" who "interact very well" and "have fun." In addition, the Department quoted K.H. as stating that she had a "good time" and "lots of fun" when she had in-person visits with Mother.

services had been granted to Mother twice and terminated twice, and no such request had been made at the previous hearing. Mother's attorney then asked the court to allow Mother to testify on the spot about her relationship with K.H., but the court denied that request as well, explaining that the hearing had not been scheduled to allow testimony contesting the termination of parental rights.

The juvenile court terminated Mother's parental rights and designated the Foster Parents as K.H.'s prospective adoptive parents. The court acknowledged the order's impact on Mother, but reminded her that K.H. had been in the dependency system for nearly four years: "[Y]ou've had the opportunity, ma'am, to get her back. You were given that opportunity. And I can't keep her in limbo any longer. It's not fair to [K.H.]"

II. DISCUSSION

Mother maintains she can challenge the order terminating reunification services in this appeal from the later parental rights termination order because the court clerk sent the advisement of her right to challenge the reunification services order to her attorney's address instead of to her "last known address" as required by law (§ 366.26, subd. (*l*)(3)(A); Cal. Rules of Court, rule 5.590(b)(2)). Because Mother lacked stable housing, however, we hold the court committed no error by sending the advisement to the address most likely to result in Mother receiving actual notice. Because Mother's failure to file an extraordinary writ is therefore unexcused, her challenge to the order terminating reunification services is non-justiciable.

Mother further contends she was denied due process at the selection and implementation hearing when the juvenile court

refused to continue the hearing to permit her to testify, or to hear her testimony on the spot even though she had not requested a contested hearing. The juvenile court was within its discretion to deny the untimely requests and, regardless, Mother has not carried her burden to demonstrate prejudice from the juvenile court's ruling—particularly in light of the reason she gave at the time for wanting to testify, i.e., to try to establish the parent-child relationship exception (§ 366.26, subd. (c)(1)(B)(i)) to termination of parental rights.

A. Mother's Challenge to the Termination of Reunification Services Is Not Reviewable on Appeal

A parent may not appeal from a court order setting a section 366.26 hearing—including determinations underlying that order, which usually includes an order terminating reunification services—unless the parent timely seeks extraordinary writ review of the termination order. (§ 366.26, subd. (*l*)(1).) In this case, Mother did not file a timely petition for extraordinary writ review.

A parent's failure to comply with the writ requirements of section 366.26, subdivision (*l*) will not deprive him or her of appellate review if the parent shows the juvenile court failed to "adequately inform the parent of their right to file a writ petition." (*In re A.A.* (2016) 243 Cal.App.4th 1220, 1240 (*A.A.*); see also *In re Harmony B.* (2005) 125 Cal.App.4th 831, 838 ["When notice is not given, the parents' claims of error occurring at the setting hearing may be addressed on review from the disposition following the section 366.26 hearing"].) Under applicable law, when the juvenile court schedules a section 366.26 hearing, it must "advise all parties . . . that if the party

wishes to preserve any right to review on appeal of the order setting the hearing . . . the party is required to seek an extraordinary writ . . . ." (Cal. Rules of Court, rule 5.590(b); see also § 366.26, subd. (*l*)(3)(A).) "The advisement must be given orally to those present when the court orders the hearing under . . . section 366.26" and it "must be sent by first-class mail by the clerk of the court to the last known address of any party who is not present when the court orders the hearing under . . . section 366.26." (Cal. Rules of Court, rule 5.590(b)(1), (2); see also § 366.26, subd. (*l*)(3)(A)(i)-(ii).)

Mother did not attend the hearing at which her reunification services were terminated, but she was represented by counsel. She contends that because the juvenile court sent her written notice of her right to appeal from the rulings made during that hearing to her attorney's address, rather than to what was reported as her last known address, the notice was deficient and she is entitled to challenge the termination of reunification services in this appeal.

Relevant case law holds, however, that technical noncompliance with the advisement requirement does not determine whether the juvenile court has committed error. (*In re T.W.* (2011) 197 Cal.App.4th 723, 729 [mother not excused from filing writ because written advisement sent to her failed to contain a zip code] (*T.W.*); *In re Hannah D.* (2017) 9 Cal.App.5th 662, 679-682 [no oral advisement at hearing was not error because father was personally served in court with required documents]; see also *A.A.*, *supra*, 243 Cal.App.4th at pp. 1242-1243 [court erred by sending writ advisement to mother's last known address because the court had reason to know she no longer lived at that address].) What matters for purposes of

assessing compliance with the written advisement requirement is whether the juvenile court sent notice "to an address where [the party] would likely receive it" (*A.A.*, *supra*, at p. 1240) and whether the party actually received notice (*T.W.*, *supra*, at p. 730; see also *In re Hannah D.*, *supra*, at p. 681 ["the ultimate purpose of the rule (i.e., actual notice) was accomplished"]).

Mother does not complain she was denied actual notice. She does not, for example, argue that her attorney did not receive the notice or that her attorney failed to give her the notice or inform her of its contents. Nor does she claim she did not earlier receive the extraordinary writ notice form sent to her directly when her reunification services were first terminated, which would have educated her about the pertinent filing requirements. Instead, she argues that sending the advisement to her counsel was "significant, because counsel's address [wa]s not mother's address and it *could* have been easily returned as mother was not a registered recipient at that address." (Emphasis ours.) For support, Mother relies on two cases: *In re Cathina W.* (1998) 68 Cal.App.4th 716 (*Cathina W.*); and *Maggie S. v. Superior Court* (2013) 220 Cal.App.4th 662 (*Maggie S.*). Neither case is apposite on the facts here.

In *Cathina W.*, the clerk did not mail notice to the mother until four days after entry of the setting order; the notice did not indicate the correct date on which the hearing had been set; and the notice was returned to the clerk with a label indicating the mother's new address, but no effort was made to mail the notice to the new address. (*Cathina W.*, *supra*, 68 Cal.App.4th at p. 723.) In *Maggie S*, the appellate court excused the mother's lack of compliance with the writ requirement because she was not orally advised of the writ requirement—even though she was

present when the section 366.26 hearing was set—and the pertinent forms were instead mailed to her in prison. (*Maggie S.*, *supra*, 220 Cal.App.4th at p. 671.)

In contrast to the facts at issue in these two cases, Mother here lacked stable housing during the course of the dependency proceedings and the juvenile court reasonably determined sending notice to Mother's attorney was the surest means of assuring she received notice. Mother had been incarcerated twice and was in and out of a variety of different living arrangements, ranging from living in a mobile home trailer with an unrelated older man, to short-term (30-day) shelters, to transitional homes, to inpatient treatment facilities for people battling substance abuse, and to being homeless and "living behind a dumpster." Under these circumstances, the juvenile court's chosen course of action was proper and we cannot excuse Mother's lack of compliance with the writ requirement. We therefore dismiss as non-justiciable her challenge to the reunification services termination order and the determinations underlying it.

B. There Is No Ground for Reversal of the Parental Rights Termination Order

1. Section 366.26 and due process

Section 366.26 directs a juvenile court selecting and implementing a permanent placement plan for a dependent child to hold a hearing. (§ 366.26, subd. (b).) The purpose of the hearing is "to provide stable, permanent homes" for dependent children. (§ 366.26, subd. (b).) "At the hearing, . . . the court . . . shall review the report [required by statute], shall indicate that the court has read and considered it, shall receive

other evidence that the parties may present, and then shall make findings and orders." (§ 366.26, subd. (b).)

Under section 366.26, subdivision (c)(1), "If the court determines, based on the assessment provided as ordered . . . and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption . . . . unless . . . [¶] . . .[¶] [t]he court finds a compelling reason for determining that termination would be detrimental" due to one or more of five enumerated circumstances. (§ 366.26, subd. (c)(1)(B).) While it is the child welfare agency's burden to prove a likelihood of adoption (*In re Brian P.* (2002) 99 Cal.App.4th 616, 623), the burden is on the parent or parents to establish the existence of one of the exceptions to termination. (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1119-1120.)

A parent has procedural due process rights at a parental rights termination hearing. (*In re Tamika T.*, *supra*, 97 Cal.App.4th at p. 1120; *In re Jeanette V.* (1998) 68 Cal.App.4th 811, 816.) Those rights include "a meaningful opportunity to be heard, present evidence, and confront witnesses." (*In re Grace P.* (2017) 8 Cal.App.5th 605, 612 (*Grace P.*).) Due process, however, is "a flexible concept dependent on the circumstances." (*In re Tamika T.*, *supra*, at p. 1122.)

We review the court's denial of a contested hearing for an abuse of discretion. (*In re Grace P.*, *supra*, 8 Cal.App.5th at p. 611 [applying abuse of discretion standard to review of court's denial of contested hearing]; see also *J.H. v. Superior Court* (2018) 20 Cal.App.5th 530, 536 [court's decision on which witness may testify reviewed for abuse of discretion].) Even if the juvenile court abused its discretion by denying a contested

hearing, that error does not require reversal unless it affects the outcome of the proceeding. (*In re James F.* (2008) 42 Cal.4th 901, 918 ["[i]f the outcome of a proceeding has not been affected, denial of a right to notice and a hearing may be deemed harmless and reversal is not required"]; *In re Jordan R.* (2012) 205 Cal.App.4th 111, 134 ["The *Chapman* harmless error standard applies in juvenile dependency proceedings where the error is of constitutional dimension"].)

2. The juvenile court did not abuse its discretion

Mother's attorney understood that her request to have her client testify would require a continuance—indeed, that is what she herself said when she raised the issue with the court (see *ante* at p. 9). The request for a continuance, however, was untimely and would have resulted in further delay in finding a permanent home for K.H. At a selection and implementation hearing, the juvenile court's focus is no longer on reunification; instead, it is on "'the needs of the child for permanency and stability.'" (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) "[D]elaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests. [Citation.]" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) After almost four years, and two terminations of reunification services, the juvenile court acted within its discretion in denying Mother's eleventh-hour request for a continuance to permit Mother to testify. (See *In re C.F.* (2011) 198 Cal.App.4th 454, 466 [juvenile courts have "'inherent powers'" to "'enable them to carry out their duties and ensure the orderly administration of justice'"]; cf. *Schimmel v. Levin* (2011)

195 Cal.App.4th 81, 87 ["'Every court has the inherent power, in furtherance of justice, to regulate the proceedings of a trial before it; to effect an orderly disposition of the issues presented; and to control the conduct of all persons in any manner connected therewith'"].)

The juvenile court also appropriately exercised its discretion when it denied Mother's request to testify on the spot, which undoubtedly would have taken time from other matters scheduled on the court's calendar. More important, allowing Mother to immediately testify would have constituted unfair surprise to the other parties, none of whom had notice they should be prepared to cross-examine Mother, to put on rebuttal witnesses, or to present other evidence. The only remedy for such surprise would have been a continuance, which as we have held, the trial court was within its discretion to deny given the case's procedural posture and the length of time that K.H. had been under DCFS's supervision. If Mother wanted to present evidence at a contested hearing, the time to make that request was weeks earlier when counsel for the parties appeared in court and acquiesced in the date for a continued hearing (or even in the ensuing weeks before the section 366.26 hearing). No such request was made, of course, and the juvenile court was not required to accede to Mother's late-made request.

3. Any error was harmless

It is Mother's burden to demonstrate prejudicial error. (See generally *In re K.B* (2009) 173 Cal.App.4th 1275, 1288.) Mother, however, does not make an attempt to show prejudice from the denial of her request to testify at a contested hearing, urging instead that "[t]his Court should refuse to speculate whether

affording [M]other a contested hearing . . . would have changed the outcome of the hearing." The absence of such an attempt is alone fatal to her argument on appeal.

But even taking Mother's argument on its own terms, we do not need to speculate because we know what Mother would have testified to and the record shows that the receipt of any such testimony would have been unavailing, thus rendering any error in declining to permit such testimony harmless. (Compare *In re Armando L.* (2016) 1 Cal.App.5th 606, 620-621 [reversing denial of a contested hearing because there was a "void" in the record, leaving the appellate court "to guess as to what evidence mother may have presented"].) Counsel's articulated justification for a continuance so Mother could testify was straightforward: "[Mother] has informed me that she visits with [K.H.] a lot. Based on that and the relationship that she has told me about, I would ask that we set this for contest. So I would ask for a continuance on that." Assuming counsel's statement sufficed to alert the juvenile court to the importance of taking testimony on the parent-child exception, there is no apparent prospect that the testimony would have changed the outcome of the selection and implementation hearing.[7]

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[7] Mother argues on appeal that the juvenile court's rulings also denied her the opportunity to present evidence on a second exception, the sibling relationship exception (§ 366.26, subd. (c)(1)(B)(v)). Although Mother gave birth to a second daughter in March 2017, her trial attorney did not include K.H.'s relationship with her baby sister as a reason why Mother should be allowed to testify. Instead, Mother's attorney confined her rationale for a continuance or on-the-spot testimony by Mother to the parent-child relationship. The appellate argument concerning the sibling relationship exception is therefore forfeited. (*In re Dakota*

a. the parent-child relationship exception

Application of the parent-child relationship exception proceeds in two parts. (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449-450.) First, a court considers whether there has been regular visitation and contact between the parent and child. (*Id.* at p. 450.) Second, a court determines whether there is a sufficiently strong bond between the parent and child that the child would suffer detriment from termination of the parent-child relationship. (*Ibid.*) In applying this exception, a court takes into account various factors, including (1) the age of the child, (2) the portion of the child's life spent in the parent's custody, (3) the positive or negative effect of interaction between parent and child, and (4) the child's unique needs. (*Grace P., supra*, 8 Cal.App.5th at p. 613.)

"To avoid termination of parental rights, it is not enough to show that a parent-child bond exists." (*In re L.S.* (2014) 230 Cal.App.4th 1183, 1200.) The parent asserting the beneficial parent-child relationship exception will not meet his or her burden by showing the existence of a "friendly and loving relationship," an emotional bond with the parent, or pleasant, even frequent, visits. (*In re J.C.* (2014) 226 Cal.App.4th 503, 529; *In re C.F.* (2011) 193 Cal.App.4th 549, 555; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) "A showing the child derives some benefit from the relationship is not a sufficient

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H. (2005) 132 Cal.App.4th 212, 221-222 [mother waived argument about the lack of a current judicial finding by not raising issue with juvenile court]; see also *In re Desiree M.* (2010) 181 Cal.App.4th 329, 334; *In re Kevin S.* (1996) 41 Cal.App.4th 882, 885-886.)

ground to depart from the statutory preference for adoption." (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646.)

A parent must instead show she occupies a parental role in the child's life. (*In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 646; *In re G.B.* (2014) 227 Cal.App.4th 1147, 1165.) The parent must establish "the child would suffer detriment if his or her relationship with the parent were terminated." (*In re C.F.*, *supra*, 193 Cal.App.4th at p. 555.) "A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child's need for a parent." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) In sum, only in the "extraordinary case" can a parent establish the exception because the selection and implementation hearing occurs after the court has repeatedly found the parent unable to meet the child's needs. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

b. Mother's proffered testimony would not have changed the order the juvenile court made

It is undisputed that Mother did not maintain regular contact with K.H. throughout the dependency proceedings. The trial court terminated reunification services in 2016 precisely because Mother had "not consistently and regularly" met with K.H. After Mother's reunification services were terminated for a second time in November 2017, Mother still visited K.H. infrequently; in fact, Mother did not visit K.H. at all during the period from mid-February to mid-April 2018. At the section 366.26 hearing in June 2018, Mother's counsel did not proffer any

specific facts that would suggest Mother had increased her visitation (quantitatively or qualitatively) with K.H. during the period from mid-April 2018 to the hearing in mid-June 2018.[8]

With regard to the relationship between Mother and K.H., there was certainly evidence Mother enjoyed a good relationship with K.H.—for example, in January 2017, the Department reported that Mother's counselor described Mother's relationship with K.H. as "'good,'" that they are "'two peas in the pod,'" and that "they interact very well." But there was no specific evidence identified by Mother's counsel at the hearing that would show or even suggest that Mother's relationship with K.H. was parental or that it promoted the well-being of K.H. to such a degree as to establish the child would suffer detriment if adopted by the Foster Parents. By the time of the selection and implementation hearing, K.H. had been not only been in the dependency system for almost half of her life, she had also been in the care of the Foster Parents for that same amount of time. There was no dispute that the Foster Parents had bonded well with K.H. and had provided a "loving, stable and safe home" for her.

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[8] Even if Mother was able to point to increased visitation in the months immediately preceding the selection and implementation hearing, it is unclear whether any such increase would have been sufficient to warrant a contested hearing. (See *In re C.F.*, *supra*, 193 Cal.App.4th at p. 554 [parent's increased visitation as the section 366.26 hearing neared did not change the overall sporadic nature of the visits]; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324 [sporadic visitation is insufficient to satisfy the first prong of the parent-child relationship exception to adoption].)

The stability offered by the Foster Parents contrasted significantly with the instability offered by Mother. As already noted, Mother's living arrangements during the course of the dependency proceedings had been anything but stable (jail, short-term shelters, transitional housing, treatment facilities, and the street). As late as March 5, 2018, the Department reported that Mother was "transient." Magnifying and contributing to Mother's unstable living arrangements was her continuing struggle with substance abuse. Mother did not merely miss a plethora of drug tests, she missed them in troubling clusters—missing a month's worth of weekly drug tests in July 2017 and then again in the August-September 2017 timeframe.

On these facts, it is not reasonable to conclude that continuing the selection and implementation hearing to permit Mother to testify would have had any realistic prospect of generating a juvenile court finding that the parent-child relationship exception to the termination of parental rights had been proven. Rather, the Court of Appeal's observation in *Grace P.*, *supra*, 8 Cal.App.5th 605 is apt here: a parent's due process rights are "subject to evidentiary principles." (*Id.* at p. 612; see also *ibid.* ["Since due process does not authorize a parent 'to introduce irrelevant evidence, due process does not require a court to hold a contested hearing if it is not convinced the parent will present relevant evidence on the issue he or she seeks to contest'"].) Here, Mother's attorney did not identify new and relevant evidence that would have altered the calculus governing the termination of parental rights and we cannot fathom what that evidence would be given the state of the record at the section 366.26 hearing. Accordingly, we hold that even if the juvenile

court abused its discretion when it denied Mother request to testify at a contested hearing, any such error was harmless.

DISPOSITION

Mother's challenge to the order terminating reunification services is dismissed. The order terminating Mother's parental rights over K.H. is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, Acting P. J.

We concur:

MOOR, J.

SEIGLE, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.